

JAMES E. WILSON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

John F. Dillon (Maples & Lomax, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (89-LHC-1684) of Administrative Law Judge C. Richard Avery rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or contrary to law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

On December 6, 1986, claimant, a retiree, filed a claim for occupational hearing loss benefits under the Act against employer. The issues could not be resolved administratively and the matter was referred to the Office of Administrative Law Judge for a formal hearing. The administrative law judge awarded claimant compensation for a 14.4 percent binaural impairment pursuant to Section 8(c)(13)(B) of the Act, 33 U.S.C. §908(c)(13)(B), based upon an average weekly wage of \$562.87. The administrative law judge also awarded claimant interest, medical benefits, and an assessment under Section 14(e) of the Act, 33 U.S.C. §914(e).

Thereafter, claimant's attorney submitted a fee petition for services rendered at the administrative law judge level, requesting \$2,815.25, representing 22.25 hours of services at \$125 per hour and \$34 in expenses. Employer filed objections and claimant replied to employer's

objections. In a Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the hourly rate requested to \$100, and disallowed 1.5 of the 22.25 hours sought, as well as the photocopying and travel expenses claimed. Accordingly, he awarded claimant's counsel a fee of \$2,075 for 20.75 hours of services at \$100.¹

On appeal, employer challenges the administrative law judge's fee award on various grounds, incorporating the objections it made below into its brief on appeal. Claimant, incorporating his reply brief to employer's objections below, responds, urging that the fee award be affirmed.

Employer initially contends that the fee awarded by the administrative law judge is excessive. Although employer maintains that consideration of the quality of the representation provided, the complexity of the issues involved, and the amount of benefits obtained mandates a complete reversal or at least a substantial reduction of the fee award, we decline to address these arguments which have been raised by employer for the first time on appeal. *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd in pertinent part mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Hoda v. Ingalls Shipbuilding, Inc.*, 28 BRBS 197 (1994) (McGranery, J., dissenting) (Decision on Recon.); *Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993). We note, however, that the administrative law judge did consider the complexity of the case in determining that the \$125 hourly rate requested was excessive and that an hourly rate of \$100 is reasonable and appropriate. While employer also argues that the \$100 hourly rate awarded by the administrative law judge is excessive, and that an hourly rate of \$80 to \$85 for claimant's senior counsel, and \$70 to \$75 for his associate counsel, would be more appropriate, employer has not established an abuse of discretion committed by the administrative law judge in this regard.² See *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Snowden v. Ingalls Shipbuilding, Inc.*, 25 BRBS 245 (1991) (Brown, J., dissenting on other grounds), *aff'd on recon. en banc*, 25 BRBS 346 (1992) (Brown, J., dissenting on other grounds).

Employer additionally objects to counsel's use of the minimum quarter-hour billing method and to specific itemized entries on various dates involving the preparation or review of routine correspondence. The administrative law judge in the present case determined that counsel's minimum quarter-hour billing method was reasonable and appropriate. Our review of counsel's fee petition, however, indicates that it generally conforms to the guidelines set forth in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (unpublished) and *Ingalls*

¹The administrative law judge also denied claimant's counsel's request for an additional one hour for time spent in defending the fee petition which claimant had requested in his reply to employer's objections.

²Employer has attached a copy of an article from a Mississippi Defense Lawyers Association newsletter to its objections; however, this article merely indicates that fees for defense attorneys in the area range widely. It does not support employer's contention that the hourly rate requested by claimant's counsel in this case is unreasonable.

Shipbuilding, Inc. v. Director, OWCP [Fairley], No. 89-4459 (5th Cir. July 25, 1990)(unpublished), that attorneys, generally, may not charge more than one-eighth hour for reading a one-page letter and one-quarter hour for writing a one-page letter. The one-quarter hour entries for services performed on July 14, 1989, for receipt and review of a letter from carrier regarding independent medical examination, on July 19, 1989, for receipt and review of Notice of Appearance of Counsel, and receipt and review of Director's motion to dismiss, and on August 2, 1989, for receipt and review of letter from carrier regarding independent medical examination appointment, however, are excessive under the aforementioned guidelines. Accordingly, we modify the administrative law judge's fee award to reflect the reduction of these entries to one-eighth of an hour each consistent with *Biggs* and *Fairley*. See generally *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Finally, employer contends that the time spent in certain discovery-related activity, in trial preparation and attendance, and in reviewing various medical and legal documents was either unnecessary, excessive, or clerical in nature. In evaluating counsel's fee petition, the administrative law judge after considering employer's objections, disallowed 1.5 of the hours claimed and found the remaining itemized entries to be reasonable and necessary. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion. See *Maddon*, 23 BRBS at 62; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Accordingly with the exception of the reduction in the quarter-hour entries previously discussed, we decline to further reduce or disallow the hours approved by the administrative law judge.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is modified to reflect the reduction of four itemized entries on July 14, 1989, July 19, 1989, and August 2, 1989, from one-quarter to one-eighth of an hour each. Counsel

is therefore entitled to a fee of \$2,025 representing 20.25 hours at \$100 per hour for work performed before the administrative law judge. In all other respects, the decision is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge